



# Insolvency (Amendment) Act (Northern Ireland) 2016

## 2016 CHAPTER 2

An Act to amend the law relating to insolvency; and for connected purposes. [29th January 2016]

BE IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

### *Provisions relating to communication*

#### **Attendance at meetings and use of websites**

1.—(1) In Part 7 of the Insolvency Order, after Article 208 (unenforceability of liens on books, etc.) insert—

#### *“Remote attendance at meetings*

#### **208ZA Remote attendance at meetings: company insolvency**

- (1) This Article applies to—
  - (a) any meeting of the creditors of a company summoned under this Order or the rules; or
  - (b) any meeting of the members or contributories of a company summoned by the office-holder under this Order or the rules, other

than a meeting of the members of a company in a members' voluntary winding up.

(2) Where the person summoning a meeting ("the convener") considers it appropriate, the meeting may be conducted and held in such a way that persons who are not present together at the same place may attend it.

(3) Where a meeting is conducted and held in the manner referred to in paragraph (2), a person attends the meeting if that person is able to exercise any rights which that person may have to speak and vote at the meeting.

(4) For the purposes of this Article—

(a) a person is able to exercise the right to speak at a meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting; and

(b) a person is able to exercise the right to vote at a meeting when—

(i) that person is able to vote, during the meeting, on resolutions put to the vote at the meeting; and

(ii) that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.

(5) The convener of a meeting which is to be conducted and held in the manner referred to in paragraph (2) shall make whatever arrangements the convener considers appropriate to—

(a) enable those attending the meeting to exercise their rights to speak or vote; and

(b) ensure the identification of those attending the meeting and the security of any electronic means used to enable attendance.

(6) Where in the reasonable opinion of the convener—

(a) a meeting will be attended by persons who will not be present together at the same place, and

(b) it is unnecessary or inexpedient to specify a place for the meeting,

any requirement under this Order or the rules to specify a place for the meeting may be satisfied by specifying the arrangements the convener proposes to enable persons to exercise their rights to speak or vote.

(7) In making the arrangements referred to in paragraph (5) and in forming the opinion referred to in paragraph (6)(b), the convener must have regard to the legitimate interests of the creditors, members or contributories and others attending the meeting in the efficient despatch of the business of the meeting.

(8) If—

(a) the notice of a meeting does not specify a place for the meeting,

- (b) the convener is requested in accordance with the rules to specify a place for the meeting, and
- (c) that request is made—
  - (i) in the case of a meeting of creditors or contributories, by not less than 10 per cent. in value of the creditors or contributories, or
  - (ii) in the case of a meeting of members, by members representing not less than 10 per cent. of the total voting rights of all the members having at the date of the request a right to vote at the meeting,

it shall be the duty of the convener to specify a place for the meeting.

- (9) In this Article, “the office-holder”, in relation to a company, means—
  - (a) its liquidator, provisional liquidator, administrator, or administrative receiver; or
  - (b) where a voluntary arrangement in relation to the company is proposed or has taken effect under Part 2, the nominee or the supervisor of the voluntary arrangement.

#### *Use of websites*

#### **208ZB Use of websites: company insolvency**

(1) Where any provision of this Order or the rules requires the office-holder to give, deliver, furnish or send a notice or other document or information to any person, that requirement is satisfied by making the notice, document or information available on a website—

- (a) in accordance with the rules; and
- (b) in such circumstances as may be prescribed.

(2) In this Article, “the office-holder” means—

- (a) the liquidator, provisional liquidator, administrator, or administrative receiver of a company; or
- (b) where a voluntary arrangement in relation to a company is proposed or has taken effect under Part 2, the nominee or the supervisor of the voluntary arrangement.”.

(2) In Part 10 of the Insolvency Order, after Article 345 (formal defects) insert—

*“Remote attendance at meetings*

**345A Remote attendance at meetings: individual insolvency**

(1) Where—

- (a) a bankruptcy order is made against an individual or an interim receiver of an individual’s property is appointed, or
- (b) a voluntary arrangement in relation to an individual is proposed or is approved under Chapter 2 of Part 8,

this Article applies to any meeting of the individual’s creditors summoned under this Order or the rules.

(2) Where the person summoning a meeting (“the convener”) considers it appropriate, the meeting may be conducted and held in such a way that persons who are not present together at the same place may attend it.

(3) Where a meeting is conducted and held in the manner referred to in paragraph (2), a person attends the meeting if that person is able to exercise any rights which that person may have to speak and vote at the meeting.

(4) For the purposes of this Article—

- (a) a person exercises the right to speak at a meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting; and
- (b) a person exercises the right to vote at a meeting when—
  - (i) that person is able to vote, during the meeting, on resolutions put to the vote at the meeting; and
  - (ii) that person’s vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.

(5) The convener of a meeting which is to be conducted and held in the manner referred to in paragraph (2) shall make whatever arrangements the convener considers appropriate to—

- (a) enable those attending the meeting to exercise their rights to speak or vote; and
- (b) ensure the identification of those attending the meeting and the security of any electronic means used to enable attendance.

(6) Where in the reasonable opinion of the convener—

- (a) a meeting will be attended by persons who will not be present together at the same place, and
- (b) it is unnecessary or inexpedient to specify a place for the meeting,

any requirement under this Order or the rules to specify a place for the meeting may be satisfied by specifying the arrangements the convener proposes to enable persons to exercise their rights to speak or vote.

(7) In making the arrangements referred to in paragraph (5) and in forming the opinion referred to in paragraph (6)(b), the convener must have regard to the legitimate interests of the creditors and others attending the meeting in the efficient despatch of the business of the meeting.

(8) If—

- (a) the notice of a meeting does not specify a place for the meeting,
- (b) the convener is requested in accordance with the rules to specify a place for the meeting, and
- (c) that request is made by not less than 10 per cent. in value of the creditors,

it shall be the duty of the convener to specify a place for the meeting.

#### *Use of websites*

### **345B Use of websites: individual insolvency**

(1) This Article applies where—

- (a) a bankruptcy order is made against an individual or an interim receiver of an individual's property is appointed, or
- (b) a voluntary arrangement in relation to an individual is proposed or is approved under Chapter 2 of Part 8,

and “the office-holder” means the official receiver, the trustee in bankruptcy, the interim receiver, the nominee or the supervisor of the voluntary arrangement, as the case may be.

(2) Where any provision of this Order or the rules requires the office-holder to give, deliver, furnish or send a notice or other document or information to any person, that requirement is satisfied by making the notice, document or information available on a website—

- (a) in accordance with the rules; and
- (b) in such circumstances as may be prescribed.”.

### **References to things in writing**

2.—(1) After Article 2A of the Insolvency Order (proceedings under EC Regulation: modified definition of property) insert—

**“2B References to things in writing**

(1) A reference in this Order to a thing in writing includes that thing in electronic form.

(2) Paragraph (1) does not apply to the following provisions—

- (a) Article 97(2) (dissent from arrangement under Article 96);
- (b) Article 103(1) (definition of inability to pay debts; the statutory demand);
- (c) Article 186(1) (inability to pay debts: unpaid creditor for £750 or more);
- (d) Article 187 (inability to pay debts: debt remaining unsatisfied after action brought); and
- (e) Article 242(1) and (2) (definition of “inability to pay”, etc.; the statutory demand).”

(2) Paragraph 1(2) of Schedule B1 to the Insolvency Order (interpretation) is repealed.

*Requirements relating to meetings***Removal of requirement for annual meetings in a members’ voluntary and a creditors’ voluntary winding up**

3.—(1) For Article 79 of the Insolvency Order (general company meeting at each year’s end) substitute—

**“79 Progress report to company**

(1) Subject to Articles 82 and 88, the liquidator must—

- (a) for each prescribed period produce a progress report relating to the prescribed matters; and
- (b) within such period commencing with the end of the period referred to in sub-paragraph (a) as may be prescribed send a copy of the progress report to—
  - (i) the members of the company; and
  - (ii) such other persons as may be prescribed.

(2) A liquidator who fails to comply with this Article shall be guilty of an offence.”

(2) For Article 91 of the Insolvency Order (meetings of company and creditors at each year’s end) substitute—

**“91 Progress report to company and creditors**

- (1) The liquidator must—
  - (a) for each prescribed period produce a progress report relating to the prescribed matters; and
  - (b) within such period commencing with the end of the period referred to in sub-paragraph (a) as may be prescribed send a copy of the progress report to—
    - (i) the members and creditors of the company; and
    - (ii) such other persons as may be prescribed.

(2) A liquidator who fails to comply with this Article shall be guilty of an offence.”.

(3) In Schedule 7 to the Insolvency Order (punishment of offences)—

(a) for the entry relating to Article 79(3) substitute—

“79(2)	Liquidator failing to send progress report to members.	Summary.	Level 3 on the standard scale.”.
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(b) for the entry relating to Article 91(3) substitute—

“91(2)	Liquidator failing to send progress report to members and creditors.	Summary.	Level 3 on the standard scale.”.
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**Requirements in relation to meetings under Articles 81 and 84 of the Insolvency Order**

4. In Articles 81(2)(b)(i) and 84(1)(b)(i) of the Insolvency Order (notice of meeting of creditors), the words “by post” are repealed.

*Reports in individual voluntary arrangements*

**Individual voluntary arrangements: removal of requirement to submit a nominee’s report to the High Court**

5.—(1) In Article 230A of the Insolvency Order (debtor’s proposal and nominee’s report)—

- (a) in paragraph (2), for “to the High Court” substitute “under paragraph (3)”; and
- (b) in paragraph (3), for “report to the Court” substitute “report to the debtor’s creditors”.

(2) In Article 231 of the Insolvency Order (summoning of creditors' meeting), for paragraph (1) substitute—

“(1) Where it has been reported to the High Court under Article 230 or to the debtor's creditors under Article 230A that a meeting of the debtor's creditors should be summoned, the nominee (or the nominee's replacement under Article 230(3) or 230A(4)) shall summon that meeting for the time, date and place proposed in the nominee's report unless, in the case of a report to which Article 230 applies, the High Court otherwise directs.”.

(3) In Article 233(2) of the Insolvency Order (report of decisions to court), for “the debtor's proposal” substitute “a voluntary arrangement proposed under Article 230”.

#### **Fast-track voluntary arrangements: notification of the Department**

6. In Article 237C of the Insolvency Order (result) after “Court” insert “, and notify the Department,”.

#### *Powers of liquidator and trustee*

#### **Powers of liquidator exercisable with or without sanction in a winding up**

7.—(1) Schedule 2 to the Insolvency Order is amended as follows.

(2) In Part 1 (powers exercisable with sanction), paragraph 3 is repealed.

(3) In Part 3 (powers exercisable without sanction in any winding up), after paragraph 7, insert—

“7A. Power to compromise, on such terms as may be agreed—

(a) all calls and liabilities to calls, all debts and liabilities capable of resulting in debts, and all claims (present or future, certain or contingent, ascertained or sounding only in damages) subsisting or supposed to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and

(b) subject to paragraph 2 in Part 1 of this Schedule, all questions in any way relating to or affecting the assets or the winding up of the company,

and take any security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect of it.”.

#### **Powers of trustee exercisable with or without sanction in a bankruptcy**

8.—(1) Schedule 3 to the Insolvency Order is amended as follows.

(2) In Part 1 (powers exercisable with sanction)—

(a) paragraph 6 is repealed; and



(b) in paragraph 8, the words “or by the trustee on any person” are repealed.

(3) In Part 2 (powers exercisable without sanction), after paragraph 10, insert—

“**10A.** Power to refer to arbitration, or compromise on such terms as may be agreed, any debts, claims or liabilities subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt.

**10B.** Power to make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the bankrupt’s estate made or capable of being made by the trustee on any person”.

### *Miscellaneous*

#### **Definition of debt**

9.—(1) The Insolvency Order is amended as follows.

(2) In Article 2 (general interpretation), for paragraph (3) substitute—

“(3) In determining for the purposes of any provision of this Order whether any liability in tort is a bankruptcy debt, the bankrupt is deemed to become subject to that liability by reason of an obligation incurred at the time when the cause of action accrued.

(3A) In determining for the purposes of any provision in this Order whether any liability in tort is a debt provable in the winding up of a company or where a company is in administration, that liability is provable if either—

(a) the cause of action has accrued—

- (i) in the case of a winding up which was not immediately preceded by an administration, at the date on which the company went into liquidation;
- (ii) in the case of a winding up which was immediately preceded by an administration, at the date on which the company entered administration;
- (iii) in the case of an administration which was not immediately preceded by a winding up, at the date on which the company entered administration;
- (iv) in the case of an administration which was immediately preceded by a winding up, at the date on which the company went into liquidation; or

(b) all the elements necessary to establish the cause of action exist at that date except for actionable damage.”.

(3) In Article 5(1) (interpretation for Parts 2 to 7), in the definition of “debt”—

- (a) for “Article 2(3)” substitute “Article 2(3A)”;
  - (b) in sub-paragraph (a) for the words from “date” to the end substitute “relevant date;”;
  - (c) in sub-paragraph (b) for “that date” in the first place it occurs substitute “the relevant date”;
  - (d) in sub-paragraph (c) for the words from “company” to the end substitute “relevant date;”.
- (4) In Article 5, after paragraph (1) insert—
- “(1A) For the purposes of the definition of “debt” in paragraph (1), “the relevant date” means—
- (a) in the case of a winding up which was not immediately preceded by an administration, the date on which the company went into liquidation;
  - (b) in the case of a winding up which was immediately preceded by an administration, the date on which the company entered administration;
  - (c) in the case of an administration which was not immediately preceded by a winding up, the date on which the company entered administration;
  - (d) in the case of an administration which was immediately preceded by a winding up, the date on which the company went into liquidation.”.
- (5) In Article 347 (the relevant date), after paragraph (6) insert—
- “(7) Nothing in this Article affects the definition of “the relevant date” in Article 5(1A).”.

### **Treatment of liabilities relating to contracts of employment**

**10.—**(1) The Insolvency Order is amended as follows.

(2) In Article 31 (vacation of office by administrator), as continued in operation by virtue of Article 4(1) of the Insolvency (Northern Ireland) Order 2005 (special administration regimes), paragraph (10) is repealed (what “wages or salary” includes for the purposes of paragraph (9)(a)).

(3) In Article 54 (receivership: agency and liability for contracts), paragraph (2D) is repealed (what “wages or salary” includes for the purposes of paragraph (2C)(a)).

(4) In Schedule B1 (administration of companies) in paragraph 100 (vacation of office by administrator: charges and liabilities), sub-paragraph (6)(d) is repealed (what “wages or salary” includes for the purposes of sub-paragraph (5)(c)) but not the “and” following it.

(5) In Schedule 4 (categories of preferential debt), in paragraph 15 (what “wages or salary” includes for the purposes of determining what is a category 5 preferential debt), paragraph (b) is repealed including the preceding “and”.

### **Deeds of arrangement**

**11.**—(1) Chapter 1 of Part 8 of the Insolvency Order (deeds of arrangement) is repealed.

(2) The Department may by order make such amendments (including repeals and revocations) to any statutory provision as it considers appropriate in consequence of this section.

(3) No order may be made under subsection (2) containing provision which amends or repeals a provision of an Act of Parliament or Northern Ireland legislation unless a draft of the order has been laid before, and approved by resolution of, the Assembly.

(4) Any other orders under subsection (2) are subject to negative resolution.

### **Bankruptcy: early discharge procedure**

**12.** Article 253(2) of the Insolvency Order (duration of bankruptcy) is repealed.

### **After-acquired property of bankrupt**

**13.**—(1) Article 280 of the Insolvency Order (power of trustee in bankruptcy to claim, for the bankrupt’s estate, property which has been acquired by, or has devolved upon, the bankrupt after commencement of the bankruptcy) is amended as follows.

(2) In paragraph (3) (property to vest in trustee on service of notice on bankrupt), for “paragraph 4” substitute “paragraphs (4) and (4A)”.

(3) In paragraph (4) (trustee not entitled to remedy against certain persons and certain bankers)—

(a) in the words before sub-paragraph (a), after “service” insert “on the bankrupt”;

(b) omit sub-paragraph (b) (provision about bankers) and the preceding “or”;

(c) in the words after sub-paragraph (b)—

(i) omit “or transaction”;

(ii) omit “or banker” (in both places where the words occur).

(4) After paragraph (4) insert—

“(4A) Where a banker enters into a transaction before service on the banker of a notice under this Article (and whether before or after service on the bankrupt of a notice under this Article) the trustee is not in respect

of that transaction entitled by virtue of this Article to any remedy against the banker.

This paragraph applies whether or not the banker has notice of the bankruptcy.”.

### **Authorisation of insolvency practitioners**

**14.—**(1) Part 12 of the Insolvency Order (insolvency practitioners and their qualification) is amended as set out in subsections (2) to (5).

(2) In Article 349 (persons not qualified to act as insolvency practitioners), for paragraph (2) substitute—

“(2) A person is not qualified to act as an insolvency practitioner at any time unless at that time the person is appropriately authorised under Article 349A of this Order.”.

(3) After Article 349 insert—

#### **“349A Authorisation**

(1) In this Part—

“partial authorisation” means authorisation to act as an insolvency practitioner—

- (a) only in relation to companies, or
- (b) only in relation to individuals;

“full authorisation” means authorisation to act as an insolvency practitioner in relation to companies, individuals and insolvent partnerships;

“partially authorised” and “fully authorised” are to be construed accordingly.

(2) A person is fully authorised under this Article to act as an insolvency practitioner by virtue of being a member of a professional body recognised under Article 350(1) and being permitted to act as an insolvency practitioner for all purposes by or under the rules of that body.

(3) A person is partially authorised under this Article to act as an insolvency practitioner—

- (a) by virtue of being a member of a professional body recognised under Article 350(1) and being permitted to act as an insolvency practitioner in relation only to companies or only to individuals by or under the rules of that body, or
- (b) by virtue of being a member of a professional body recognised under Article 350(2) and being permitted to act as an insolvency practitioner by or under the rules of that body.

**349B Partial authorisation: acting in relation to partnerships**

(1) A person who is partially authorised to act as an insolvency practitioner in relation to companies may nonetheless not accept an appointment to act in relation to a company if at the time of the appointment the person is aware that the company—

- (a) is or was a member of a partnership; and
- (b) has outstanding liabilities in relation to the partnership.

(2) A person who is partially authorised to act as an insolvency practitioner in relation to individuals may nonetheless not accept an appointment to act in relation to an individual if at the time of the appointment the person is aware that the individual—

- (a) is or was a member of a partnership other than a Scottish partnership, and
- (b) has outstanding liabilities in relation to the partnership.

(3) Subject to paragraph (9), a person who is partially authorised to act as an insolvency practitioner in relation to companies may nonetheless not continue to act in relation to a company if the person becomes aware that the company—

- (a) is or was a member of a partnership, and
- (b) has outstanding liabilities in relation to the partnership,

unless the person is granted permission to continue to act by the High Court.

(4) Subject to paragraph (9), a person who is partially authorised to act as an insolvency practitioner in relation to individuals may nonetheless not continue to act in relation to an individual if the person becomes aware that the individual—

- (a) is or was a member of a partnership other than a Scottish partnership, and
- (b) has outstanding liabilities in relation to the partnership,

unless the person is granted permission to continue to act by the High Court.

(5) The High Court may grant a person permission to continue to act for the purposes of paragraph (3) or (4) if it is satisfied that the person is competent to do so.

(6) A person who is partially authorised and becomes aware as mentioned in paragraph (3) or (4) may alternatively apply to the High Court for an order (a “replacement order”) appointing in his or her place a person who is fully authorised to act as an insolvency practitioner in relation to the company or (as the case may be) the individual.

(7) A person may apply to the High Court for permission to continue to act or for a replacement order under—

(a) where acting in relation to a company, this Article or, if it applies, Article 143(5B);

(b) where acting in relation to an individual, this Article or, if it applies, Article 276(2C).

(8) A person who acts as an insolvency practitioner in contravention of any of paragraphs (1) to (4) is guilty of an offence under Article 348 (acting without qualification).

(9) A person does not contravene paragraph (3) or (4) by continuing to act as an insolvency practitioner during the permitted period if, within the period of 7 business days beginning with the day after the day on which the person becomes aware as mentioned in the paragraph, the person—

(a) applies to the High Court for permission to continue to act, or

(b) applies to the High Court for a replacement order.

(10) For the purposes of paragraph (9)—

“business day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in Northern Ireland under the Banking and Financial Dealings Act 1971;

“permitted period” means the period beginning with the day on which the person became aware as mentioned in paragraph (3) or (4) and ending on the earlier of—

(a) the expiry of the period of 6 weeks beginning with the day on which the person applies to the High Court as mentioned in paragraph (9) (a) or (b), and

(b) the day on which the High Court disposes of the application (by granting or refusing it

“replacement order” has the meaning given by paragraph (6).”;

(4) For Article 350 (recognised professional bodies) substitute—

### “350 Recognised professional bodies

(1) The Department may by order, if satisfied that a body meets the requirements of paragraph (4), declare the body to be a recognised professional body which is capable of providing its insolvency specialist members with full authorisation or partial authorisation.

(2) The Department may by order, if satisfied that a body meets the requirements of paragraph (4), declare the body to be a recognised professional body which is capable of providing its insolvency specialist members with partial authorisation only of the kind specified in the order (as to which, see Article 349A(1)).

(3) Article 350A makes provision about the making by a body of an application to the Department for an order under this Article.

(4) The requirements are that—

- (a) the body regulates (or is going to regulate) the practice of a profession;
- (b) the body has rules which it is going to maintain and enforce for securing that its insolvency specialist members—
  - (i) are fit and proper persons to act as insolvency practitioners; and
  - (ii) meet acceptable requirements as to education and practical training and experience; and
- (c) the body's rules and practices for or in connection with authorising persons to act as insolvency practitioners, and its rules and practices for or in connection with regulating persons acting as such, are designed to ensure that the regulatory objectives are met (as to which, see Article 350C).

(5) An order of the Department under this Article has effect from such date as is specified in the order.

(6) An order under this Article may be revoked by an order under Article 350L or 350N (and see Article 361A(1)(b)).

(7) In this Part—

- (a) references to members of a recognised professional body are to persons who, whether members of that body or not, are subject to its rules in the practice of the profession in question;
- (b) references to insolvency specialist members of a professional body are to members who are permitted by or under the rules of the body to act as insolvency practitioners.

(8) A reference in this Part to a recognised professional body is to a body recognised under this Article (and see Articles 350L(6) and 350N(5)).

### **350A Application for recognition as recognised professional body**

(1) An application for an order under Article 350(1) or (2) must—

- (a) be made to the Department in such form and manner as the Department may require;
- (b) be accompanied by such information as the Department may require;
- (c) be supplemented by such additional information as the Department may require at any time between receiving the application and determining it.

(2) The requirements which may be imposed under paragraph (1) may differ as between different applications.

(3) The Department may require information provided under this Article to be in such form, and verified in such manner, as the Department may specify.

(4) An application for an order under Article 350(1) or (2) must be accompanied by—

- (a) a copy of the applicant's rules;
- (b) a copy of the applicant's policies and practices; and
- (c) a copy of any guidance issued by the applicant in writing.

(5) The reference in paragraph (4)(c) to guidance issued by the applicant is a reference to guidance or recommendations which are—

- (a) issued or made by it which will apply to its insolvency specialist members or to persons seeking to become such members;
- (b) relevant for the purposes of this Part; and
- (c) intended to have continuing effect,

including guidance or recommendations relating to the admission or expulsion of members.

(6) The Department may refuse an application for an order under Article 350(1) or (2) if the Department considers that recognition of the body concerned is unnecessary having regard to the existence of one or more other bodies which have been or are likely to be recognised under Article 350.

(7) Paragraph (8) applies where the Department refuses an application for an order under Article 350(1) or (2); and it applies regardless of whether the application is refused on the ground mentioned in paragraph (6), because the Department is not satisfied as mentioned in Article 350(1) or (2) or because a fee has not been paid (see Article 361A(1)(b)).

(8) The Department must give the applicant a written notice of the Department's decision; and the notice must set out the reasons for refusing the application.”.

(5) Articles 351 to 354 (authorisation: supplementary provisions) are repealed.

(6) In Article 361A of the Insolvency Order (fees orders (supplementary))—

- (a) in paragraph (1)(b) after “Article 350(1)” insert “or (2)”; and
- (b) after paragraph (1) (fees for grant or maintenance of recognition of professional body) insert—

“(1A) Fees under paragraph (1) may vary according to whether the body is recognised under Article 350(1) (body providing full and partial authorisation) or under Article 350(2) (body providing partial authorisation).”.

(7) An order under Article 350(1) of the Insolvency Order (recognised professional bodies) made before the coming into operation of this section is,



following the coming into operation of this section, to be treated as if it were made under Article 350(1) as substituted by subsection (4) of this section.

### **Regulatory objectives**

**15.—**(1) After Article 350A of the Insolvency Order (inserted by section 14) insert—

#### *“Regulatory objectives*

#### **350B Application of regulatory objectives**

(1) In discharging regulatory functions, a recognised professional body must, so far as is reasonably practicable, act in a way—

- (a) which is compatible with the regulatory objectives; and
- (b) which the body considers most appropriate for the purpose of meeting those objectives.

(2) In discharging functions under this Part, the Department must have regard to the regulatory objectives.

#### **350C Meaning of “regulatory functions” and “regulatory objectives”**

(1) This Article has effect for the purposes of this Part.

(2) “Regulatory functions”, in relation to a recognised professional body, means any functions the body has—

- (a) under or in relation to its arrangements for or in connection with—
  - (i) authorising persons to act as insolvency practitioners; or
  - (ii) regulating persons acting as insolvency practitioners; or
- (b) in connection with the making or alteration of those arrangements.

(3) “Regulatory objectives” means the objectives of—

- (a) having a system of regulating persons acting as insolvency practitioners that—
  - (i) secures fair treatment for persons affected by their acts and omissions;
  - (ii) reflects the regulatory principles; and
  - (iii) ensures consistent outcomes;
- (b) encouraging an independent and competitive insolvency-practitioner profession whose members—
  - (i) provide high quality services at a cost to the recipient which is fair and reasonable;

- (ii) act transparently and with integrity; and
- (iii) consider the interests of all creditors in any particular case;
- (c) promoting the maximisation of the value of returns to creditors and promptness in making those returns; and
- (d) protecting and promoting the public interest.
- (4) In paragraph (3)(a), “regulatory principles” means—
  - (a) the principles that regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and
  - (b) any other principle appearing to the body concerned (in the case of the duty under Article 350B(1)), or to the Department (in the case of the duty under Article 350B(2)), to lead to best regulatory practice.”.

### **Oversight of recognised professional bodies**

**16.—**(1) After Article 350C of the Insolvency Order (inserted by section 15) insert—

*“Oversight of recognised professional bodies*

#### **350D Directions**

(1) This Article applies if the Department is satisfied that an act or omission of a recognised professional body (or a series of such acts or omissions) in discharging one or more of its regulatory functions has had, or is likely to have, an adverse impact on the achievement of one or more of the regulatory objectives.

(2) The Department may, if in all the circumstances of the case satisfied that it is appropriate to do so, direct the body to take such steps as the Department considers will counter the adverse impact, mitigate its effect or prevent its occurrence or recurrence.

(3) A direction under this Article may require a recognised professional body—

- (a) to take only such steps as it has power to take under its regulatory arrangements;
- (b) to take steps with a view to the modification of any part of its regulatory arrangements.

(4) A direction under this Article may require a recognised professional body—

- (a) to take steps with a view to the institution of, or otherwise in respect of, specific regulatory proceedings;

(b) to take steps in respect of all, or a specified class of, such proceedings.

(5) For the purposes of this Article, a direction to take steps includes a direction which requires a recognised professional body to refrain from taking a particular course of action.

(6) In this Article “regulatory arrangements”, in relation to a recognised professional body, means the arrangements that the body has for or in connection with—

- (a) authorising persons to act as insolvency practitioners; or
- (b) regulating persons acting as insolvency practitioners.

### **350E Directions: procedure**

(1) Before giving a recognised professional body a direction under Article 350D, the Department must give the body a notice accompanied by a draft of the proposed direction.

(2) The notice under paragraph (1) must—

- (a) state that the Department proposes to give the body a direction in the form of the accompanying draft;
- (b) specify why the Department has reached the conclusions mentioned in Article 350D(1) and (2); and
- (c) specify a period within which the body may make written representations with respect to the proposal.

(3) The period specified under paragraph (2)(c)—

- (a) must begin with the date on which the notice is given to the body; and
- (b) must not be less than 28 days.

(4) On the expiry of that period, the Department must decide whether to give the body the proposed direction.

(5) The Department must give notice of that decision to the body.

(6) Where the Department decides to give the proposed direction, the notice under paragraph (5) must—

- (a) contain the direction;
- (b) state the time at which the direction is to take effect; and
- (c) specify the Department’s reasons for the decision to give the direction.

(7) Where the Department decides to give the proposed direction, the Department must publish the notice under paragraph (5); but this paragraph does not apply to a direction to take any step with a view to the institution of, or otherwise in respect of, regulatory proceedings against an individual.

(8) The Department may revoke a direction under Article 350D; and, where doing so, the Department—

- (a) must give the body to which the direction was given notice of the revocation; and
- (b) must publish the notice and, if the notice under paragraph (5) was published under paragraph (7), must do so (if possible) in the same manner as that in which that notice was published.

### **350F Financial penalty**

(1) This Article applies if the Department is satisfied—

- (a) that a recognised professional body has failed to comply with a requirement to which this Article applies; and
- (b) that, in all the circumstances of the case, it is appropriate to impose a financial penalty on the body.

(2) This Article applies to a requirement imposed on the recognised professional body—

- (a) by a direction given under Article 350D; or
- (b) by a provision of this Order or of subordinate legislation under this Order.

(3) The Department may impose a financial penalty, in respect of the failure, of such amount as the Department considers appropriate.

(4) In deciding what amount is appropriate, the Department—

- (a) must have regard to the nature of the requirement which has not been complied with; and
- (b) must not take into account the Department's costs in discharging functions under this Part.

(5) A financial penalty under this Article is payable to the Department; and sums received by the Department in respect of a financial penalty under this Article (including by way of interest) are to be paid into the Consolidated Fund.

(6) In Articles 350G to 350I, “penalty” means a financial penalty under this Article.

### **350G Financial penalty: procedure**

(1) Before imposing a penalty on a recognised professional body, the Department must give notice to the body—

- (a) stating that the Department proposes to impose a penalty and the amount of the proposed penalty;
- (b) specifying the requirement in question;

- (c) stating why the Department is satisfied as mentioned in Article 350F(1); and
  - (d) specifying a period within which the body may make written representations with respect to the proposal.
- (2) The period specified under paragraph (1)(d)—
- (a) must begin with the date on which the notice is given to the body; and
  - (b) must not be less than 28 days.
- (3) On the expiry of that period, the Department must decide—
- (a) whether to impose a penalty; and
  - (b) whether the penalty should be the amount stated in the notice or a reduced amount.
- (4) The Department must give notice of the decision to the body.
- (5) Where the Department decides to impose a penalty, the notice under paragraph (4) must—
- (a) state that the Department has imposed a penalty on the body and its amount;
  - (b) specify the requirement in question and state—
    - (i) why it appears to the Department that the requirement has not been complied with; or
    - (ii) where, by that time, the requirement has been complied with, why it appeared to the Department when giving the notice under paragraph (1) that the requirement had not been complied with; and
  - (c) specify a time by which the penalty is required to be paid.
- (6) The time specified under paragraph (5)(c) must be at least three months after the date on which the notice under paragraph (4) is given to the body.
- (7) Where the Department decides to impose a penalty, the Department must publish the notice under paragraph (4).
- (8) The Department may rescind or reduce a penalty imposed on a recognised professional body; and, where doing so, the Department—
- (a) must give the body notice that the penalty has been rescinded or reduced to the amount stated in the notice; and
  - (b) must publish the notice; and it must (if possible) be published in the same manner as that in which the notice under paragraph (4) was published.

**350H Appeal against financial penalty**

(1) A recognised professional body on which a penalty is imposed may appeal to the High Court on one or more of the appeal grounds.

(2) The appeal grounds are—

- (a) that the imposition of the penalty was not within the Department's power under Article 350F;
- (b) that the requirement in respect of which the penalty was imposed had been complied with before the notice under Article 350G(1) was given;
- (c) that the requirements of Article 350G have not been complied with in relation to the imposition of the penalty and the interests of the body have been substantially prejudiced as a result;
- (d) that the amount of the penalty is unreasonable;
- (e) that it was unreasonable of the Department to require the penalty imposed to be paid by the time specified in the notice under Article 350G(5)(c).

(3) An appeal under this Article must be made within the period of three months beginning with the day on which the notice under Article 350G(4) in respect of the penalty is given to the body.

(4) On an appeal under this Article the Court may—

- (a) quash the penalty;
- (b) substitute a penalty of such lesser amount as the Court considers appropriate; or
- (c) in the case of the appeal ground in paragraph (2)(e), substitute for the time imposed by the Department a different time.

(5) Where the Court substitutes a penalty of a lesser amount, it may require the payment of interest on the substituted penalty from such time, and at such rate, as it considers just and equitable.

(6) Where the Court substitutes a later time for the time specified in the notice under Article 350G(5)(c), it may require the payment of interest on the penalty from the substituted time at such rate as it considers just and equitable.

(7) Where the Court dismisses the appeal, it may require the payment of interest on the penalty from the time specified in the notice under Article 350G(5)(c) at such rate as it considers just and equitable.

**350I Recovery of financial penalties**

(1) If the whole or part of a penalty is not paid by the time by which it is required to be paid, the unpaid balance from time to time carries interest at the rate for the time being applicable to a money judgment of the High Court (but

this is subject to any requirement imposed by the Court under Article 350H(5), (6) or (7)).

(2) If an appeal is made under Article 350H in relation to a penalty, the penalty is not required to be paid until the appeal has been determined or withdrawn.

(3) Paragraph (4) applies where the whole or part of a penalty has not been paid by the time it is required to be paid and—

(a) no appeal relating to the penalty has been made under Article 350H during the period within which an appeal may be made under that Article; or

(b) an appeal has been made under that Article and determined or withdrawn.

(4) The Department may recover from the recognised professional body in question, as a debt due to the Department, any of the penalty and any interest which has not been paid.

### **350J Reprimand**

(1) This Article applies if the Department is satisfied that an act or omission of a recognised professional body (or a series of such acts or omissions) in discharging one or more of its regulatory functions has had, or is likely to have, an adverse impact on the achievement of one or more of the regulatory objectives.

(2) The Department may, if in all the circumstances of the case satisfied that it is appropriate to do so, publish a statement reprimanding the body for the act or omission (or series of acts or omissions).

### **350K Reprimand: procedure**

(1) If the Department proposes to publish a statement under Article 350J in respect of a recognised professional body, it must give the body a notice—

(a) stating that the Department proposes to publish such a statement and setting out the terms of the proposed statement;

(b) specifying the acts or omissions to which the proposed statement relates; and

(c) specifying a period within which the body may make written representations with respect to the proposal.

(2) The period specified under paragraph (1)(c)—

(a) must begin with the date on which the notice is given to the body; and

(b) must not be less than 28 days.

(3) On the expiry of that period, the Department must decide whether to publish the statement.

(4) The Department may vary the proposed statement; but before doing so, the Department must give the body notice—

- (a) setting out the proposed variation and the reasons for it; and
- (b) specifying a period within which the body may make written representations with respect to the proposed variation.

(5) The period specified under paragraph (4)(b)—

- (a) must begin with the date on which the notice is given to the body; and
- (b) must not be less than 28 days.

(6) On the expiry of that period, the Department must decide whether to publish the statement as varied.”

(2) In Article 361A of the Insolvency Order (fees orders (supplementary)), after paragraph (1A) (inserted by section 14(6)(b)) insert—

“(1B) In setting under paragraph (1) the amount of a fee in connection with maintenance of recognition, the matters to which the Department may have regard include, in particular, the costs of the Department in connection with any functions under Articles 350D, 350E, 350J, 350K and 350N.”

### **Recognised professional bodies: revocation of recognition**

17.—(1) After Article 350K of the Insolvency Order (inserted by section 16) insert—

*“Revocation etc. of recognition*

#### **350L Revocation of recognition at instigation of Department**

(1) An order under Article 350(1) or (2) in relation to a recognised professional body may be revoked by the Department by order if the Department is satisfied that—

- (a) an act or omission of the body (or a series of such acts or omissions) in discharging one or more of its regulatory functions has had, or is likely to have, an adverse impact on the achievement of one or more of the regulatory objectives; and
- (b) it is appropriate in all the circumstances of the case to revoke the body’s recognition under Article 350.

(2) If the condition set out in paragraph (3) is met, an order under Article 350(1) in relation to a recognised professional body may be revoked by the Department by an order which also declares the body concerned to be a recognised professional body which is capable of providing its insolvency



specialist members with partial authorisation only of the kind specified in the order (see Article 349A(1)).

- (3) The condition is that the Department is satisfied—
  - (a) as mentioned in paragraph (1)(a); and
  - (b) that it is appropriate in all the circumstances of the case for the body to be declared to be a recognised professional body which is capable of providing its insolvency specialist members with partial authorisation only of the kind specified in the order.
- (4) In this Part—
  - (a) an order under paragraph (1) is referred to as a “revocation order”;
  - (b) an order under paragraph (2) is referred to as a “partial revocation order”.
- (5) A revocation order or partial revocation order—
  - (a) has effect from such date as is specified in the order; and
  - (b) may make provision for members of the body in question to continue to be treated as fully or partially authorised (as the case may be) to act as insolvency practitioners for a specified period after the order takes effect.
- (6) A partial revocation order has effect as if it were an order made under Article 350(2).

### **350M Orders under Article 350L: procedure**

- (1) Before making a revocation order or partial revocation order in relation to a recognised professional body, the Department must give notice to the body—
  - (a) stating that the Department proposes to make the order and the terms of the proposed order;
  - (b) specifying the Department’s reasons for proposing to make the order; and
  - (c) specifying a period within which the body, members of the body or other persons likely to be affected by the proposal may make written representations with respect to it.
- (2) Where the Department gives a notice under paragraph (1), the Department must publish the notice on the same day.
- (3) The period specified under paragraph (1)(c)—
  - (a) must begin with the date on which the notice is given to the body; and
  - (b) must not be less than 28 days.

(4) On the expiry of that period, the Department must decide whether to make the revocation order or (as the case may be) partial revocation order in relation to the body.

(5) The Department must give notice of the decision to the body.

(6) Where the Department decides to make the order, the notice under paragraph (5) must specify—

- (a) when the order is to take effect; and
- (b) the Department's reasons for making the order.

(7) A notice under paragraph (5) must be published; and it must (if possible) be published in the same manner as that in which the notice under paragraph (1) was published.

### **350N Revocation of recognition at request of body**

(1) An order under Article 350(1) or (2) in relation to a recognised professional body may be revoked by the Department by order if—

- (a) the body has requested that an order be made under this paragraph; and
- (b) the Department is satisfied that it is appropriate in all the circumstances of the case to revoke the body's recognition under Article 350.

(2) An order under Article 350(1) in relation to a recognised professional body may be revoked by the Department by an order which also declares the body concerned to be a recognised professional body which is capable of providing its insolvency specialist members with partial authorisation only of the kind specified in the order (see Article 349A(1)) if—

- (a) the body has requested that an order be made under this paragraph; and
- (b) the Department is satisfied that it is appropriate in all the circumstances of the case for the body to be declared to be a recognised professional body which is capable of providing its insolvency specialist members with partial authorisation only of the kind specified in the order.

(3) Where the Department decides to make an order under this Article the Department must publish a notice specifying—

- (a) when the order is to take effect; and
- (b) the Department's reasons for making the order.

(4) An order under this Article—

- (a) has effect from such date as is specified in the order; and

(b) may make provision for members of the body in question to continue to be treated as fully or partially authorised (as the case may be) to act as insolvency practitioners for a specified period after the order takes effect.

(5) An order under paragraph (2) has effect as if it were an order made under Article 350(2).”.

(2) In Article 361A of the Insolvency Order (fees orders (supplementary)), after paragraph (5) insert—

“(5A) Article 350M applies for the purposes of an order under paragraph (1)(b) as it applies for the purposes of a revocation order made under Article 350L.”.

### **Court sanction of insolvency practitioners in public interest cases**

**18.** After Article 350N of the Insolvency Order (inserted by section 17) insert—

*“Court sanction of insolvency practitioners in public interest cases*

#### **350O Direct sanction orders**

(1) For the purposes of this Part a “direct sanctions order” is an order made by the High Court against a person who is acting as an insolvency practitioner which—

- (a) declares that the person is no longer authorised (whether fully or partially) to act as an insolvency practitioner;
- (b) declares that the person is no longer fully authorised to act as an insolvency practitioner but remains partially authorised to act as such either in relation to companies or individuals, as specified in the order;
- (c) declares that the person’s authorisation to act as an insolvency practitioner is suspended for the period specified in the order or until such time as the requirements so specified are complied with;
- (d) requires the person to comply with such other requirements as may be specified in the order while acting as an insolvency practitioner;
- (e) requires the person to make such contribution as may be specified in the order to one or more creditors of a company, individual or insolvent partnership in relation to which the person is acting or has acted as an insolvency practitioner.

(2) Where the Court makes a direct sanctions order, the relevant recognised professional body must take all necessary steps to give effect to the order.

(3) A direct sanctions order must not specify a contribution as mentioned in paragraph (1)(e) which is more than the remuneration that the person has received or will receive in respect of acting as an insolvency practitioner in the case.

(4) In this Article and Article 350P, “relevant recognised professional body”, in relation to a person who is acting as an insolvency practitioner, means the recognised professional body by virtue of which the person is authorised so to act.

### **350P Application for, and power to make, direct sanctions order**

(1) The Department may apply to the High Court for a direct sanctions order to be made against a person if it appears to the Department that it would be in the public interest for the order to be made.

(2) The Department must send a copy of the application to the relevant recognised professional body.

(3) The Court may make a direct sanctions order against a person where, on an application under this Article, the Court is satisfied that condition 1 and at least one of conditions 2, 3, 4 and 5 are met in relation to the person.

(4) The conditions are set out in Article 350Q.

(5) In deciding whether to make a direct sanctions order against a person the Court must have regard to the extent to which—

- (a) the relevant recognised professional body has taken action against the person in respect of the failure mentioned in condition 1; and
- (b) that action is sufficient to address the failure.

### **350Q Direct sanctions order: conditions**

(1) Condition 1 is that the person, in acting as an insolvency practitioner or in connection with any appointment as such, has failed to comply with—

- (a) a requirement imposed by the rules of the relevant recognised professional body;
- (b) any standards, or code of ethics, for the insolvency-practitioner profession adopted from time to time by the relevant recognised professional body.

(2) Condition 2 is that the person—

- (a) is not a fit and proper person to act as an insolvency practitioner;
- (b) is a fit and proper person to act as an insolvency practitioner only in relation to companies, but the person’s authorisation is not so limited; or

(c) is a fit and proper person to act as an insolvency practitioner only in relation to individuals, but the person's authorisation is not so limited.

(3) Condition 3 is that it is appropriate for the person's authorisation to act as an insolvency practitioner to be suspended for a period or until one or more requirements are complied with.

(4) Condition 4 is that it is appropriate to impose other restrictions on the person acting as an insolvency practitioner.

(5) Condition 5 is that loss has been suffered as a result of the failure mentioned in condition 1 by one or more creditors of a company, individual or insolvent partnership in relation to which the person is acting or has acted as an insolvency practitioner.

(6) In this Article "relevant recognised professional body" has the same meaning as in Article 350O.

### **350R Direct sanctions direction instead of order**

(1) The Department may give a direction (a "direct sanctions direction") in relation to a person acting as an insolvency practitioner to the relevant recognised professional body (instead of applying, or continuing with an application, for a direct sanctions order against the person) if the Department is satisfied that—

(a) condition 1 and at least one of conditions 2, 3, 4 and 5 are met in relation to the person (see Article 350Q); and

(b) it is in the public interest for the direction to be given.

(2) But the Department may not give a direct sanctions direction in relation to a person without that person's consent.

(3) A direct sanctions direction may require the relevant recognised professional body to take all necessary steps to secure that—

(a) the person is no longer authorised (whether fully or partially) to act as an insolvency practitioner;

(b) the person is no longer fully authorised to act as an insolvency practitioner but remains partially authorised to act as such either in relation to companies or individuals, as specified in the direction;

(c) the person's authorisation to act as an insolvency practitioner is suspended for the period specified in the direction or until such time as the requirements so specified are complied with;

(d) the person must comply with such other requirements as may be specified in the direction while acting as an insolvency practitioner;

(e) the person makes such contribution as may be specified in the direction to one or more creditors of a company, individual or insolvent partnership in relation to which the person is acting or has acted as an insolvency practitioner.

(4) A direct sanctions direction must not specify a contribution as mentioned in paragraph (3)(e) which is more than the remuneration that the person has received or will receive in respect of acting as an insolvency practitioner in the case.

(5) In this Article “relevant recognised professional body” has the same meaning as in Article 350O.”.

### **Power for Department to obtain information**

**19.** After Article 350R of the Insolvency Order (inserted by section 18) insert—

#### *“General*

### **350S Power for Department to obtain information**

(1) A person mentioned in paragraph (2) must give the Department such information as the Department may by notice in writing require for the exercise of the Department’s functions under this Part.

(2) Those persons are—

- (a) a recognised professional body;
- (b) any individual who is or has been authorised under Article 349A to act as an insolvency practitioner;
- (c) any person who is connected to such an individual.

(3) A person is connected to an individual who is or has been authorised to act as an insolvency practitioner if, at any time during the authorisation—

- (a) the person was an employee of the individual;
- (b) the person acted on behalf of the individual in any other way;
- (c) the person employed the individual;
- (d) the person was a fellow employee of the individual’s employer;
- (e) in a case where the individual was employed by a firm, partnership or company, the person was a member of the firm or partnership or (as the case may be) a director of the company.

(4) In imposing a requirement under paragraph (1) the Department may specify—

- (a) the time period within which the information in question is to be given; and
- (b) the manner in which it is to be verified.”.

### **Compliance orders**

**20.** After Article 350S of the Insolvency Order (inserted by section 19) insert—

#### **“350T Compliance orders**

(1) If at any time it appears to the Department that—

- (a) a recognised professional body has failed to comply with a requirement imposed on it by or by virtue of this Part; or
- (b) any other person has failed to comply with a requirement imposed on the person by virtue of Article 350S,

the Department may make an application to the High Court.

(2) If, on an application under this Article, the Court decides that the body or other person has failed to comply with the requirement in question, it may order the body or person to take such steps as the Court considers will secure that the requirement is complied with.”.

#### *Power to establish single regulator of insolvency practitioners*

### **Power to establish single regulator of insolvency practitioners**

**21.—(1)** The Department may by regulations designate a body for the purposes of—

- (a) authorising persons to act as insolvency practitioners; and
- (b) regulating persons acting as such.

(2) The designated body may be either—

- (a) a body corporate established by the regulations; or
- (b) a body (whether a body corporate or an unincorporated association) already in existence when the regulations are made (an “existing body”).

(3) The regulations may, in particular, confer the following functions on the designated body—

- (a) establishing criteria for determining whether a person is a fit and proper person to act as an insolvency practitioner;
- (b) establishing the requirements as to education, practical training and experience which a person must meet in order to act as an insolvency practitioner;

- (c) establishing and maintaining a system for providing full authorisation or partial authorisation to persons who meet those criteria and requirements;
  - (d) imposing technical standards for persons so authorised and enforcing compliance with those standards;
  - (e) imposing professional and ethical standards for persons so authorised and enforcing compliance with those standards;
  - (f) monitoring the performance and conduct of persons so authorised;
  - (g) investigating complaints made against, and other matters concerning the performance or conduct of, persons so authorised.
- (4) The regulations may require the designated body, in discharging regulatory functions, so far as is reasonably practicable, to act in a way—
- (a) which is compatible with the regulatory objectives; and
  - (b) which the body considers most appropriate for the purpose of meeting those objectives.
- (5) Provision made under subsection (3)(d) or (3)(e) for the enforcement of the standards concerned may include provision enabling the designated body to impose a financial penalty on a person who is or has been authorised to act as an insolvency practitioner.
- (6) The regulations may, in particular, include provision for the purpose of treating a person authorised to act as an insolvency practitioner by virtue of being a member of a professional body recognised under Article 350 of the Insolvency Order immediately before the regulations come into force as authorised to act as an insolvency practitioner by the body designated by the regulations after that time.
- (7) Expressions used in this section which are defined for the purposes of Part 12 of the Insolvency Order have the same meaning in this section as in that Part.
- (8) Regulations under this section shall not be made unless a draft of the regulations has been laid before and approved by resolution of the Assembly.
- (9) Section 22 makes further provision about regulations under this section which designate an existing body.
- (10) Schedule 1 makes supplementary provision in relation to the designation of a body by regulations under this section.

### **Regulations under section 21: designation of existing body**

**22.**—(1) The Department may make regulations under section 21 designating an existing body only if it appears to the Department that—

- (a) the body is able and willing to exercise the functions that would be conferred by the regulations; and



- (b) the body has arrangements in place relating to the exercise of those functions which are such as to be likely to ensure that the conditions in subsection (2) are met.
- (2) The conditions are—
  - (a) that the functions in question will be exercised effectively; and
  - (b) where the regulations are to contain any requirements or other provisions prescribed under subsection (3), that those functions will be exercised in accordance with any such requirements or provisions.
- (3) Regulations which designate an existing body may contain such requirements or other provisions relating to the exercise of the functions by the designated body as appear to the Department to be appropriate.

#### **Power to make regulations**

**23.**—(1) Article 363 of the Insolvency Order (regulations for purposes of Part 12) is amended as follows.

- (2) The existing provision becomes paragraph (2) of that Article.
- (3) In that paragraph—
  - (a) after “generality of” insert “paragraph (1) or”;
  - (b) for “regulations may contain” substitute “regulations under this Article may contain”.
- (4) Before that paragraph insert—

“(1) The Department may make regulations for the purpose of giving effect to Part 12 of this Order.”.
- (5) After that paragraph insert—

“(3) In making regulations under this Article, the Department must have regard to the regulatory objectives (as defined by Article 350C(3)).”.

#### **Company arrangement or administration provision to apply to a credit union**

**24.** In Article 10(2) of the Insolvency (Northern Ireland) Order 2005 (societies to whom a company arrangement or administration provision may apply) at the end add “or the Credit Unions (Northern Ireland) Order 1985.”.

#### **Disqualification from office: duty to consult the Lord Chief Justice**

**25.** In Article 24(7) of the Insolvency (Northern Ireland) Order 2005, at the end add “; but any such order may only be made after consultation with the Lord Chief Justice where the appeal is to a specified court.”.

### *Supplementary*

#### **Interpretation**

**26.** In this Act—

“the Department” means the Department of Enterprise, Trade and Investment;

“the Insolvency Order” means the Insolvency (Northern Ireland) Order 1989;

“statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954.

#### **Transitional provisions, minor and consequential amendments and repeals**

**27.**—(1) Schedule 2 (which makes provision with respect to transition) has effect.

(2) Schedule 3 (which makes minor and consequential amendments) has effect.

(3) The statutory provisions specified in Schedule 4 are repealed to the extent specified.

#### **Commencement**

**28.**—(1) This section and sections 26 and 29 come into operation on the day after the day on which this Act receives Royal Assent.

(2) The other provisions of this Act come into operation on such day or days as the Department may by order appoint.

(3) An order under subsection (2) may contain such transitional or saving provisions as the Department considers appropriate.

#### **Short title**

**29.** This Act may be cited as the Insolvency (Amendment) Act (Northern Ireland) 2016.

## SCHEDULES

### SCHEDULE 1

Section 21(10).

#### SINGLE REGULATOR OF INSOLVENCY PRACTITIONERS: SUPPLEMENTARY PROVISION

##### *Operation of this Schedule*

1.—(1) This Schedule has effect in relation to regulations under section 21 designating a body (referred to in this Schedule as “the Regulations”) as follows—

- (a) paragraphs 2 to 13 have effect where the Regulations establish the body;
- (b) paragraphs 6, 7 and 9 to 13 have effect where the Regulations designate an existing body (see section 21(2)(b));
- (c) paragraph 14 also has effect where the Regulations designate an existing body that is an unincorporated association.

(2) Provision made in the Regulations by virtue of paragraph 6 or 12, where that paragraph has effect as mentioned in sub-paragraph (1)(b), may only apply in relation to—

- (a) things done by or in relation to the body in or in connection with the exercise of functions conferred on it by the Regulations; and
- (b) functions of the body which are functions so conferred.

##### *Name, members and chair*

2.—(1) The Regulations must prescribe the name by which the body is to be known.

(2) The Regulations must provide that the members of the body must be appointed by the Department after such consultation as the Department thinks appropriate.

(3) The Regulations must provide that the Department must appoint one of the members as the chair of the body.

(4) The Regulations may include provision about—

- (a) the terms on which the members of the body hold and vacate office;
- (b) the terms on which the person appointed as the chair holds and vacates that office.

*Remuneration etc.*

3.—(1) The Regulations must provide that the body must pay to its chair and members such remuneration and allowances in respect of expenses properly incurred by them in the exercise of their functions as the Department may determine.

(2) The Regulations must provide that, as regards any member (including the chair) in whose case the Department so determines, the body must pay or make provision for the payment of—

- (a) such pension, allowance or gratuity to or in respect of that person on retirement or death as the Department may determine; or
- (b) such contributions or other payment towards the provision of such a pension, allowance or gratuity as the Department may determine.

(3) The Regulations must provide that where—

- (a) a person ceases to be a member of the body otherwise than on the expiry of the term of office; and
- (b) it appears to the Department that there are special circumstances which make it right for that person to be compensated,

the body must make a payment to the person by way of compensation of such amount as the Department may determine.

*Staff*

4. The Regulations must provide that—

- (a) the body may appoint such persons to be its employees as the body considers appropriate; and
- (b) the employees are to be appointed on such terms and conditions as the body may determine.

*Proceedings*

5.—(1) The Regulations may make provision about the proceedings of the body.

(2) The Regulations may, in particular—

- (a) authorise the body to exercise any function by means of committees consisting wholly or partly of members of the body;
- (b) provide that the validity of proceedings of the body, or of any such committee, is not affected by any vacancy among the members or any defect in the appointment of a member.

*Fees*

6.—(1) The Regulations may make provision—

- (a) about the setting and charging of fees by the body in connection with the exercise of its functions;
  - (b) for the retention by the body of any such fees payable to it;
  - (c) about the application by the body of such fees.
- (2) The Regulations may, in particular, make provision—
- (a) for the body to be able to set such fees as appear to it to be sufficient to defray the expenses of the body exercising its functions, taking one year with another;
  - (b) for the setting of fees by the body to be subject to the approval of the Department.
- (3) The expenses referred to in sub-paragraph (2)(a) include any expenses incurred by the body on such staff, accommodation, services and other facilities as appear to it to be necessary or expedient for the proper exercise of its functions.

#### *Consultation*

7. The Regulations may make provision as to the circumstances and manner in which the body must consult others before exercising any function conferred on it by the Regulations.

#### *Training and other services*

- 8.—(1) The Regulations may make provision authorising the body to provide training or other services to any person.
- (2) The Regulations may make provision authorising the body—
- (a) to charge for the provision of any such training or other services; and
  - (b) to calculate any such charge on the basis that it considers to be the appropriate commercial basis.

#### *Report and accounts*

- 9.—(1) The Regulations must require the body, at least once in each 12 month period, to report to the Department on—
- (a) the exercise of the functions conferred on it by the Regulations; and
  - (b) such other matters as may be prescribed in the Regulations.
- (2) The Regulations must require the Department to lay before the Assembly a copy of each report received under this paragraph.
- (3) Unless section 394 of the Companies Act 2006 applies to the body (duty on every company to prepare individual accounts), the Regulations must provide that

the Department may give directions to the body with respect to the preparation of its accounts.

(4) Unless the body falls within sub-paragraph (5), the Regulations must provide that the Department may give directions to the body with respect to the audit of its accounts.

(5) The body falls within this sub-paragraph if it is a company whose accounts—

- (a) are required to be audited in accordance with Part 16 of the Companies Act 2006 (see section 475 of that Act); or
- (b) are exempt from the requirements of that Part under section 482 of that Act (non-profit making companies subject to public sector audit).

(6) The Regulations may provide that, whether or not section 394 of the Companies Act 2006 applies to the body, the Department may direct that any provisions of that Act specified in the directions are to apply to the body with or without modifications.

#### *Funding*

**10.** The Regulations may provide that the Department may make grants to the body.

#### *Financial penalties*

**11.—(1)** This paragraph applies where the Regulations include provision enabling the body to impose a financial penalty on a person who is, or has been, authorised to act as an insolvency practitioner (see section 21(5)).

(2) The Regulations—

- (a) must include provision about how the body is to determine the amount of a penalty; and
- (b) may, in particular, prescribe a minimum or maximum amount.

(3) The Regulations must provide that, unless the Department (with the consent of the Department of Finance and Personnel) otherwise directs, income from penalties imposed by the body is to be paid into the Consolidated Fund.

(4) The Regulations may also, in particular—

- (a) include provision for a penalty imposed by the body to be enforced as a debt;
- (b) prescribe conditions that must be met before any action to enforce a penalty may be taken.

#### *Status etc.*

**12.** The Regulations must provide that—

- (a) the body is not to be regarded as acting on behalf of the Crown; and
- (b) its members, officers and employees are not to be regarded as Crown servants.

*Transfer schemes*

**13.**—(1) This paragraph applies if the Regulations make provision designating a body (whether one established by the Regulations or one already in existence) in place of a body designated by earlier regulations under section 21; and those bodies are referred to as the “new body” and the “former body” respectively.

(2) The Regulations may make provision authorising the Department to make a scheme (a “transfer scheme”) for the transfer of property, rights and liabilities from the former body to the new body.

(3) The Regulations may provide that a transfer scheme may include provision—

- (a) about the transfer of property, rights and liabilities that could not otherwise be transferred;
- (b) about the transfer of property acquired, and rights and liabilities arising, after the making of the scheme.

(4) The Regulations may provide that a transfer scheme may make consequential, supplementary, incidental or transitional provision and may in particular—

- (a) create rights, or impose liabilities, in relation to property or rights transferred;
- (b) make provision about the continuing effect of things done by the former body in respect of anything transferred;
- (c) make provision about the continuation of things (including legal proceedings) in the process of being done by, on behalf of or in relation to the former body in respect of anything transferred;
- (d) make provision for references to the former body in an instrument or other document in respect of anything transferred to be treated as references to the new body;
- (e) make provision for the shared ownership or use of property;
- (f) if the TUPE regulations do not apply to in relation to the transfer, make provision which is the same or similar.

(5) The Regulations must provide that, where the former body is an existing body, a transfer scheme may only make provision in relation to—

- (a) things done by or in relation to the former body in or in connection with the exercise of functions conferred on it by previous regulations under section 21; and
- (b) functions of the body which are functions so conferred.

(6) In sub-paragraph (4)(f), “TUPE regulations” means the [Transfer of Undertakings \(Protection of Employment\) Regulations 2006 \(SI 2006/246\)](#).

(7) In this paragraph—

- (a) references to rights and liabilities include rights and liabilities relating to a contract of employment;
- (b) references to the transfer of property include the grant of a lease.

*Additional provision where body is unincorporated association*

**14.—**(1) This paragraph applies where the body is an unincorporated association.

(2) The Regulations must provide that any relevant proceedings may be brought by or against the body in the name of any body corporate whose constitution provides for the establishment of the body.

(3) In sub-paragraph (2) “relevant proceedings” means proceedings brought in or in connection with the exercise of any function conferred on the body by the Regulations.

## SCHEDULE 2

Section 27(1).

### TRANSITIONAL PROVISIONS

*Requirements relating to meetings*

**1.** The amendments made to Articles 79 and 91 of the Insolvency Order (progress reports in a winding up) by section 3 do not apply in respect of a company in voluntary winding up where the resolution for voluntary winding up was passed before the day on which section 3 comes into operation.

**2.** The amendments made to Articles 81 and 84 of the Insolvency Order by section 4 (notice of creditors’ meeting) do not apply in respect of a company in voluntary winding up where the resolution for voluntary winding up was passed before the day on which section 4 comes into operation.

*Reports in individual voluntary arrangements*

**3.** The amendments made to the Insolvency Order by section 5 do not apply in respect of a proposal for a voluntary arrangement under Part 8 of the Insolvency Order where—

- (a) Article 230A of that Order applies; and
- (b) a person agrees to act as nominee in respect of the proposal before the day on which section 5 comes into operation.



*Powers of liquidator*

4. The amendments made to Schedule 2 to the Insolvency Order (powers of liquidator in a winding up) by section 7 do not apply in respect of any proceedings under the Insolvency Order where—

- (a) in the case of a company in voluntary winding up, the resolution for voluntary winding up was passed before the day on which section 7 comes into operation;
- (b) in the case of a company in voluntary winding up pursuant to paragraph 84 of Schedule B1 to the Insolvency Order (moving from administration to creditors' voluntary liquidation), the company entered the preceding administration before the day on which section 7 comes into operation;
- (c) in the case of a company in winding up following an order for the conversion of administration or a voluntary arrangement into winding up by virtue of Article 37 of Council Regulation (EC) No. 1346/2000 on insolvency proceedings, the order for conversion was made before the day on which section 7 comes into operation; and
- (d) in the case of a company being wound up by the High Court, the winding up order was made before the day on which section 7 comes into operation.

*Powers of trustee*

5. The amendments made to Schedule 3 to the Insolvency Order (powers of trustee in bankruptcy) by section 8 do not apply in respect of any proceedings under the Insolvency Order where—

- (a) the debtor was adjudged bankrupt before the day on which section 8 comes into operation; and
- (b) in the case of a bankruptcy following an order for the conversion of a voluntary arrangement into a bankruptcy by virtue of Article 37 of Council Regulation (EC) No. 1346/2000, the order for conversion was made before the day on which section 8 comes into operation.

*Definition of debt*

6. The amendments made to the Insolvency Order by section 9 apply where a company enters administration on or after the relevant day, except where—

- (a) the company enters administration by virtue of an administration order under paragraph 11 of Schedule B1 to the Insolvency Order on an application made before the relevant day;
- (b) the administration is immediately preceded by a voluntary liquidation in respect of which the resolution to wind up was passed before the relevant day;

- (c) the administration is immediately preceded by a liquidation on the making of a winding up order on a petition which was presented before the relevant day.

7. The amendments made to the Insolvency Order by section 9 apply where a company goes into liquidation upon the passing on or after the relevant day of a resolution to wind up.

8. The amendments made to the Insolvency Order by section 9 apply where a company goes into voluntary liquidation under paragraph 84 of Schedule B1 to the Insolvency Order, except where—

- (a) the company entered the preceding administration before the relevant day; or
- (b) the company entered the preceding administration by virtue of an administration order under paragraph 11 of Schedule B1 to the Insolvency Order on an application which was made before the relevant day.

9. The amendments made to the Insolvency Order by section 9 apply where a company goes into liquidation on the making of a winding up order on a petition presented on or after the relevant day, except where the liquidation is immediately preceded by—

- (a) an administration under paragraph 11 of Schedule B1 to the Insolvency Order where the administration order was made on an application made before the relevant day;
- (b) an administration in respect of which the appointment of an administrator under paragraph 15 or 23 of Schedule B1 to the Insolvency Order took effect before the relevant day; or
- (c) a voluntary liquidation in respect of which the resolution to wind up was passed before the relevant day.

10. In paragraphs 6 to 9, “the relevant day” means the day on which section 9 comes into operation.

#### *Authorisation of insolvency practitioners*

11. For the purposes of this paragraph and paragraphs 12 to 16—

“the commencement date” is the date on which section 14(5) comes into operation;

“the transitional period” is the period of 1 year beginning with the commencement date.

12. Where, immediately before the commencement date, a person holds an authorisation granted under Article 352 of the Insolvency Order, Article 352(3A) to (6) of that Order together with, for the purposes of this paragraph, sub-paragraphs (a) and (b) of Article 352(2) of that Order (which are repealed by section 14(5))

continue to have effect in relation to the person and the authorisation during the transitional period.

**13.** During the transitional period, a person to whom paragraph 12 applies is to be treated for the purposes of Part 12 of the Insolvency Order as fully authorised under Article 349A of that Order (as inserted by section 14(3) of this Act) to act as an insolvency practitioner unless and until the person's authorisation is (by virtue of paragraph 12) withdrawn.

**14.** Where, immediately before the commencement date, a person has applied under Article 351 of the Insolvency Order for authorisation to act as an insolvency practitioner and the application has not been granted, refused or withdrawn, Article 351(4) to (7) and 352(1) and (2) of that Order (which are repealed by section 14(5)) continue to have effect in relation to the person and the application during the transitional period.

**15.** Where, during the transitional period, an authorisation is (by virtue of paragraph 14) granted under Article 352 of the Insolvency Order, paragraphs 12 and 13 apply as if—

- (a) the authorisation had been granted immediately before the commencement date;
- (b) in paragraph 12, the reference to Article 352(3A) to (6) were a reference to Article 352(4) to (6).

**16.** For the purposes of paragraphs 12 and 14, Articles 353 and 354 of the Insolvency Order (which are repealed by section 14(5)) continue to have effect during the transitional period.

### SCHEDULE 3

Section 27(2).

#### MINOR AND CONSEQUENTIAL AMENDMENTS

##### *The Solicitors (Northern Ireland) Order 1976 (NI 12)*

**1.** In Article 13(1)(k), for the words from “has entered” to the end substitute “a composition or scheme proposed by the solicitor has been approved under Chapter 2 of Part 8 of the Insolvency (Northern Ireland) Order 1989.”.

**2.** In Article 14A(2)(b), for paragraph (b) substitute—

- “(b) a composition or scheme proposed by the solicitor has been approved under Chapter 2 of Part 8 of the Insolvency (Northern Ireland) Order 1989; or”.

3. In Article 41(3)(a), for the words from “or enters” to “dies” substitute “, or a composition or scheme proposed by the solicitor has been approved under Chapter 2 of Part 8 of the Insolvency (Northern Ireland) Order 1989 or the solicitor dies”.

*The Insolvency (Northern Ireland) Order 1989 (NI 19)*

4. In Article 14(2), omit “or authorised to act as nominee,”.

5. In Article 15(4), omit “, or authorised to act as nominee,”.

6. In Article 17(2), omit “or authorised to act as nominee,”.

7. In Article 20(5), omit “or authorised to act as supervisor,”.

8. In Article 103(1)(a), for “a demand” substitute “a written demand”.

9. In Article 185, after paragraph (2) insert—

“(2A) For all purposes of winding up, the principal place of business in Northern Ireland of the unregistered company is deemed to be the registered office of the company.”.

10. In Article 186(1)(a) after “written demand” insert “(known as “the statutory demand”)”.

11. In Article 242(1)(a) for “a demand” substitute “a written demand”.

12. In Article 242(2)(a) for “a demand” substitute “a written demand”.

13. In Article 343(1), after “the interim receiver” insert “or”.

14. Omit Article 348(1A).

15. Omit Article 348A.

16. Omit Article 361A(2).

17. In Schedule A1—

(a) in paragraph 38(1), omit “, or authorised to act as nominee,”;

(b) in paragraph 41(2), omit “, or authorised to act as nominee,”;

(c) in paragraph 43(1), omit “, or authorised to act as nominee,”;

(d) in paragraph 49(6), omit “, or authorised to act as supervisor,”.

18. In Schedule B1, in paragraph 1A, for “outside Northern Ireland” substitute “outside the United Kingdom”.

19. In Schedule 1, in paragraph 3, at the beginning insert “Without prejudice to Article 28 or 30 of the Property (Northern Ireland) Order 1997,”.

*The Pensions (Northern Ireland) Order 2005 (NI 1)*

20. In Article 105(2)(b), for “or 230A(3)” substitute “of that Order or a report to the individual’s creditors under Article 230A(3)”.

*The Insolvency (Northern Ireland) Order 2005 (NI 10)*

## 21. Omit Article 26(3).

## SCHEDULE 4

Section 27(3).

## REPEALS

Short Title	Extent of Repeal
<a href="#">The Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 (NI 11)</a>	In Article 15(8)—
	(a) in sub-paragraph (a), the words from “or becomes” to “creditors,”;
	(b) the words “trustee under the deed,”.
	In Article 40(4)—
	(a) in sub-paragraph (a), the words from “or becomes” to “creditors,”;
	(b) the words “trustee under the deed,”.
	In Article 66(7)—
	(a) in sub-paragraph (a), the words from “or becomes” to “creditors,”;
	(b) the words “trustee under the deed,”.
	In Article 86(7)—
	(a) in sub-paragraph (a), the words from “or becomes” to “creditors,”;
	(b) the words “trustee under the deed,”.
In Article 114(7)—	
(a) in sub-paragraph (a), the words from “or becomes” to “creditors,”;	
(b) the words “trustee under the deed,”.	
In Article 143(5)—	
(a) in sub-paragraph (a), the words from “or becomes” to “creditors,”;	
(b) the words “trustee under the deed”.	
In Article 160(7)—	

Short Title	Extent of Repeal
The Insolvency (Northern Ireland) Order 1989 (NI 19)	(a) in sub-paragraph (a), the words from “or becomes” to “creditors,”;
	(b) the words “trustee under the deed,”.
	In Article 2(2), in the definition of “prescribed”, the words “, 212(h) and 222”.
	Article 3(2)(b).
	In Article 4(5)(a), the words “(other than Chapter 1 of Part 8)”.
	In Article 5(1), the definition of “nominee”.
	In Article 9(1), the definitions of “creditors generally”, “deed of arrangement”, “nominee” and “the registrar”.
	Article 9(3).
	In Article 14(2), the words “or authorised to act as nominee,”.
	In Article 15(4), the words “, or authorised to act as nominee,”.
	In Article 17(2), the words “or authorised to act as nominee,”.
	In Article 20(5), the words “or authorised to act as supervisor,”.
	Article 31(10).
	Article 54(2D).
	In Article 81(2)(b)(i), the words “by post”.
In Article 84(1)(b)(i), the words “by post”.	
In Article 185(2), the words from “, and the principal” to the end.	
In Part 8, Chapter 1.	
Article 234(3).	

Short Title	Extent of Repeal
	Article 237D(6).
	Article 253(2).
	In Article 280—
	(a) paragraph (4)(b) and the preceding “or”;
	(b) in paragraph (4) the words “or transaction”;
	(c) in paragraph (4), the words “or banker” in both places where they occur.
	In Article 343(1)—
	(a) sub-paragraph (c) and the preceding “or”;
	(b) the words “or the trustee under the deed of arrangement”.
	In Article 344, the words “(other than Chapter 1 of Part 8)”.
	Article 348(1A).
	Article 348A.
	Articles 351 to 354.
	Article 361A(2).
	In Article 362(1)(a), the entries relating to Articles 215(5) and 221(4).
	In Schedule A1—
	(a) in paragraph 38(1), the words “, or authorised to act as nominee,”;
	(b) in paragraph 41(2), the words “, or authorised to act as nominee,”;
	(c) in paragraph 43(1), the words “, or authorised to act as nominee,”;
	(d) in paragraph 49(6), the words “, or authorised to act as supervisor,”.
	In Schedule B1—
	(a) paragraph 1(2);
	(b) paragraph 100(6)(d) but not the “and” following it.
	In Part 1 of Schedule 2, paragraph 3.

Short Title	Extent of Repeal
	<p>In Part 1 of Schedule 3—</p> <p>(a) paragraph 6;</p> <p>(b) in paragraph 8, the words “or by the trustee on any person”.</p> <p>In Schedule 4, paragraph 15(b) and the preceding “and”.</p> <p>In Schedule 6, in the cross-heading preceding paragraph 6, the words “Deeds of arrangement and”.</p> <p>In Schedule 6, in paragraph 6—</p> <p>(a) the words from “for endorsement” to “Article 211 and”;</p> <p>(b) the word “other”.</p> <p>In Schedule 6, in paragraph 25(a) and (c), the words “, the trustee of a deed of arrangement”.</p> <p>In Schedule 6, in paragraph 28, the words “deeds of arrangement,”.</p> <p>In Schedule 7, the entry relating to Article 218(1).</p> <p>In Schedule 8, paragraph 17 and the preceding cross-heading.</p>
The Licensing (Northern Ireland) Order 1996 (NI 22)	<p>In Article 28(1)—</p> <p>(a) in sub-paragraph (a), the words from “or a trustee” to “creditors,”;</p> <p>(b) the words “trustee under the deed,”.</p>
The Insolvency (Northern Ireland) Order 2002 (NI 6)	Article 6(2) and (3).
The Pensions (Northern Ireland) Order 2005 (NI 1)	Article 105(2)(c).
The Insolvency (Northern Ireland) Order 2005 (NI 10)	Article 26(3).